# SINGAPORE REPORTS

## PEOPLE'S CREDIT (PTE.) LTD. v. EE KEE CHAI

**[O.C.J. (Winslow J.) August 24, 1973]**
**[Singapore — Suit No. 1188 of 1972]**

*Bailment — Motor car left for washing and cleaning — Motor car stolen — Bailment for reward — Liability of bailee.*

The plaintiff company had left their car with the defendant for washing and cleaning. Subsequently, the car was found missing. The plaintiff claimed for the value of the car.

**Held:** in the circumstances the defendant was a bailee for reward and as the defendant had failed to prove that he had taken all reasonable precautions to protect the car from theft, he was liable to pay the value of the car.

*Cases referred to:-*

(1) *Ashby* v. *Tolhurst* [1937] 2 All E.R. 837.

(2) *Andrews* v. *Home Flats Ltd.* [1945] 2 All E.R. 698.

CIVIL SUIT.

*Robert T. M. Yap* for the plaintiffs.

*Peter Guok* for the defendants.

**Winslow J.:** A car owned by the plaintiff company whose office was a few doors from the defendant's petrol kiosk in Geylang was allotted to the use of its managing director, one Lim Tuan Meng, who left it at that kiosk for washing and cleaning at about noon on 3rd December 1971. It was clearly understood that he would be returning to collect it at about 5 p.m. that day as he informed his regular car washer, one Hussein, a defence witness (employed by the defendant) who confirmed this.

When he arrived at the kiosk earlier than expected shortly before 4 p.m. he found it missing as did Hussein himself who said he last saw it at the kiosk at about 3 p.m. When questioned by Lim whether some employee of the defendant might have taken it for a drive, the latter replied that it was unlikely, a strange statement to make if it was locked after washing. Shortly afterwards, Lim reported its loss to the police in the hope that it could be traced.

He was a valued client of the petrol kiosk which he had patronised from the time the car was purchased 18 months earlier. He bought his petrol from this kiosk and also had his car serviced there. Furthermore, he paid $12 p.m. additionally to have the car washed and cleaned by the servants of the defendant at the kiosk including the regular washer, Hussein.

I have to decide on all the evidence whether this car was in fact entrusted to the care and custody of the defendant by way of a bailment for reward and whether its loss was due to the latter's negligence.

Considerable efforts were made to establish that no keys had been left behind by Lim to enable Hussein to move the car around in the limited area reserved for washing cars known as the "wash area" to prevent obstruction owing to congestion. After claiming that Hussein "seldom drives" the defendant said that Hussein was not licensed to drive cars. The defence also tried to show that cars sent for washing and cleaning were washed with the aid of pails of water and not hoses from stand-pipes in that area.

Having considered all the evidence, I find that Lim left the car with its keys in the custody of Hussein that day for washing and cleaning and that Hussein ascertained from Lim when he would be collecting the car and was told that Lim would come for it at 5 p.m.

The defendant and Hussein gave evidence to the effect that no keys were ever left behind with them by Lim. Hussein said he locked the car without keys by pressing buttons inside the Mercedes car after washing it and left it in the wash area that day.

I do not accept their evidence either as to the method of washing employed or as to the fact that no keys were entrusted to Hussein. I did not believe the defendant that only those who sent cars for greasing, servicing and incidental washing left their keys behind and that these were left with the cashier for collection by owners later. There was a further calculated attempt by the defence to absolve itself of all responsibility for the custody of cars left at the kiosk for washing by its insistence that only casual passers-by whose cars were taken in for washing were required to surrender their keys. The reason given by the defendant was that this was done to ensure payment of the fee of $2 per wash for services rendered before collection.

An attempt was also made by producing photographs at AB5 to show that notices denying liability for damage to vehicles left on the premises were posted in prominent places therein by the defendant from 1970. I accept the evidence of Lim however that he only noticed these posters a week or 10 days after the loss of his car and that when he questioned the defendant about why such notices had not been posted before 3rd December 1971 the latter made no reply. I do not find that such notices were in existence before 3rd December 1971. Lim may not have been a very satisfactory witness in one or two other respects which appear on the record but I accepted his evidence on this particular aspect as well as other aspects material to the issues in this case.

It was clear that the defence was utilising all the ammunition available in its armoury to deny acceptance of responsibility of any kind for Lim's actions with regard to this car when left behind at the kiosk.

I do not believe the defence version that Lim took advantage of his position as a financier to throw his weight around and abuse privileges accorded him occasionally to park his car at the kiosk. I do not find that he did so frequently and for unduly long hours. I have to consider, however, the facts relating to the events which occurred on 3rd December, 1971. I do not believe the defendant that bad blood existed between him and Lim as a result of an ugly incident after the car was found missing or that Lim warned the defendant that if he would not compensate him he would "look for him later" *i.e.* give him trouble. Lim, on the other hand, said that he was still on friendly terms with the defendant but that, to be on the safe side, he had decided to take his custom elsewhere to another kiosk nearer where he lived. I accept what he said on this aspect of the matter.

He also gave evidence that the defendant had paid him 3 visits on 15th, 16th and 18th May 1973 respectively just before this trial began, that they were

friendly visits but that, knowing that the defendant was involved in this litigation, he deemed it prudent to make a note of these visits in his desk diary. This was confirmed by the diary and these visits were unchallenged. A futile effort was made later during the defence to show that the defendant visited Lim at the latter's request though this was never put to Lim earlier. No one said a word about the actual discussions at these visits and I am not prepared to conclude that these were other than cordial visits. The plaintiffs led this evidence of visits with a view to showing that Lim and the defendant were still on friendly terms notwithstanding this litigation which was instituted at the instance of Lim's insurers who have already paid Lim. The defendant did not succeed in rebutting this evidence in any way.

Finding the facts as I do, I now turn to the law. All the necessary ingredients for the creation of a bailment of the car were proved to be present *i.e.* first, a delivery of possession of the car to the defendant at his kiosk for the purpose of washing and cleaning it on 3rd December 1971. This involved a temporary transfer of its custody on the clear understanding that the car should be returned to the bailor, Lim, at about 5 p.m. that day after the specific work thereon undertaken by the defendant had been completed.

This car was not merely parked there at the risk of Lim Tuan Meng who left it there. It was left there with its keys to enable cleaning to be effected for which he paid $12 per month in addition to providing the kiosk with his custom as purchaser of petrol and in addition to using the kiosk for greasing and servicing his car. I hold that there was a bailment for reward and not a mere right or licence to park simpliciter or a purely gratuitous bailment. *Ashby* v. *Tolhurst*[1] can be distinguished on its facts because, in that case, a mere licence to park was conferred at a fee and liability for damage was negated by conditions on the parking ticket itself.

Nor was this, for obvious reasons, only a gratuitous bailment. Even if the fee for washing cars was only $12 p.m. the bailor brought business to the defendant in other respects. It was held that a landlord of a block of service flats who accepted a trunk for storage without charge from a tenant's wife was *not* a gratuitous bailee merely but subject to the same rules as a bailee for reward, *Andrews* v. *Home Flats Ltd.*[2] I find that it suited the defendant's business purposes and prospects to accord more facilities to regular customers like Lim than he otherwise need have done and that he did undertake for 18 months at least the responsibilities of looking after the car whilst left in the custody of the kiosk and to return it when required after, as in this case, washing and cleaning it. He did not employ a ticket system as in *Ashby's* case in order to make it quite clear to customers that he was not accepting responsibility for the safety of cars left in his kiosk's premises and in order to make it clear that, if so left, they were entirely at the customer's own risk. I find that it was the shock precipitated by the loss of this car on 3rd December, 1971 which caused him to exhibit the notices shown in the photographs AB5. I am satisfied that he did not do so earlier because he never thought of it until then.

The onus of disproving negligence is on the bailee once a bailment has been shown to exist. The defendant did not discharge that onus.

A bailee is required to take that degree of care which may reasonably be looked for, having regard to all the circumstances. In the circumstances of this case he is liable at least for ordinary negligence since the bailment was for the benefit of both parties.

In my judgment, the defendant failed to take all reasonable precautions to protect the car from theft; that if, as in this case, he entrusted that duty to his servant or agent, he is answerable for that servant's carelessness in carrying out that duty. If he had taken the elementary precaution of ensuring the safe-keeping of the keys of the car, after it had been cleaned and locked, by adopting the same procedure as he says he did in the case of cars sent there for greasing and servicing, this loss could have been prevented. Even Hussein said that he saw the car in the place where it had been left (the "wash area") at about 3 p.m. Thereafter he was elsewhere in the premises under some trees whilst this car was out of his sight. He had been alert enough to see some friends of Lim take this car away on previous occasions and he did not stop them. If he had exercised the same vigilance on this occasion he should have been able to see that some unauthorised stranger was tampering with the car and/or removing it, particularly if, as he says he did in fact lock it.

Judgment will accordingly be entered for the plaintiffs in the agreed sum of $9,500 with costs.

*Judgment for the plaintiffs.*

Solicitors: *Battenberg & Talma; Guok & Ganesan.*

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## WEE KANG WHYE & ANOR. v. LEE WOON TONG

**[O.C.J. (Choor Singh J.) September 21, 1973]**
**[Singapore — Suit No. 2044 of 1971]**

*Land Laws — Defendant allowed to occupy and build hut on land by the plaintiffs — Condition that defendant was to vacate the place without compensation when requested to do so — Plaintiffs claiming possession — Whether defendant entitled to remain on land — Whether defendant was a licensee coupled with an interest — Estoppel — Equitable relief.*

In this case the facts were that the defendant was permitted to occupy the plaintiff's land and to build a temporary structure on it on condition that he had to vacate the place without any compensation when requested to do so. The plaintiffs agreed to sell the property with vacant possession and offered the defendant $5,000 as compensation for him to move out. The defendant apparently agreed to accept the $5,000 and to vacate the hut but subsequently he changed his mind and refused to move out. The plaintiffs thereupon brought an action for possession.

**Held:** (1) the plaintiffs in this case had granted the defendant a temporary gratuitous licence which they were entitled to revoke at will. The defendant acquired no rights at all, neither in law nor in equity;

(2) the plaintiffs were therefore entitled to an order of possession against the defendant.

*Cases referred to:-*

(1) *Winter Garden Theatre Ltd.* v. *Millennium Productions Ltd.* [1948] A.C. 173.